

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 93-69

In the Matter of

Amendment of Section 73.202(b), RM-8106
Table of Allotments,
FM Broadcast Stations.
(San Carlos and Oracle, Arizona)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: March 8, 1993; Released: March 31, 1993

Comment Date: May 21, 1993
Reply Comment Date: June 7, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by Desert West Air Ranchers Corporation ("petitioner"), permittee of Station KOYF(FM), Channel 279A, San Carlos, Arizona, seeking the substitution of Channel 276C2 for Channel 279A and modification of its construction permit to specify operation on the higher powered channel. In order to accommodate the request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 279A for Channel 276A at Oracle, Arizona, and modification of the license for Station KLOB(FM), Channel 276A.¹

2. We believe the public interest would be served by the proposal since it could enable Station KOYF(FM) to expand its coverage area. Channel 276C2 can be substituted for Channel 279A at the petitioner's authorized site, located 27.2 kilometers (16.9 miles) west of the community,² consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules. Additionally, Channel 279A can be substituted for Channel 276A at Oracle, Arizona, at the authorized site of Station KLOB(FM).³ Since San Carlos and Oracle are located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain concurrence of the Mexican government in the proposal.⁴

¹ Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402 (b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Petitioner is re-

3. The petitioner's modification request at San Carlos is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the permit for Station KOYF(FM) without entertaining competing expressions of interest in the use of Channel 276C2 at that community, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KLOB(FM) at Oracle, Arizona, as to why its license should not be modified to specify operation on Channel 279A in lieu of Channel 276A.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KLOB(FM) for its reasonable costs associated with moving to Channel 279A.

5. In view of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

		Channel No.
City	Present	Proposed
San Carlos, Arizona	279A	276C2
Oracle, Arizona	276A	279A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Golden State Broadcasting Corporation, licensee of Station KLOB(FM), Channel 276A, Oracle, Arizona, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 279A in lieu of Channel 276A.

7. Pursuant to Section 1.87 of the Commission's Rules, Golden State Broadcasting Corporation may, not later than May 21, 1993, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Golden State Broadcasting Corporation, to furnish additional information. If Golden State Broadcasting Corporation raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Golden State Broadcasting Corporation will be deemed to have consented to

quested to correct this omission in its comments.

² Coordinates at the site specified in the construction permit issued for Station KOYF(FM) (File No. BPH-910516ML) are 33-23-13 and 110-44-25.

³ Coordinates at the licensed site of Station KLOB(FM) are 32-37-07 and 110-47-20.

⁴ Consideration of this proposal, and termination of this proceeding, is conditioned upon the adoption of a working arrangement between the United States and Mexican governments to implement the 1992 U.S./Mexico FM Broadcast Agreement.

the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KLOB(FM), as follows: Golden State Broadcasting Corporation, P.O. Box 26040, Tucson, Arizona 85726.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **May 21, 1993**, and reply comments on or before **June 7, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Desert West Air Ranchers Corporation
Attn.: Ted Tucker, President
P.O. Box 36717
Tucson, Arizona 85740

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.